ERISA has proved remarkably effective in protecting pension benefits for America's private sector employees as well as the integrity of privately managed benefit plans. This is particularly true for ''defined benefit plans'' that were the norm in 1974. Since then, particularly in recent years, there has been a dramatic shift toward ''defined contribution'' plans in which workers and their employers contribute to individual accounts, and within a range determined by the pension plan sponsor, choose how to invest that money.

An estimated 42 million employees now participate in defined contribution plans. This means the employees, not the employer, assume a high degree of responsibility for managing their funds. Retirement aspirations and plans depend largely on the prudence and wisdom of their investment decisions. Too often, individual plan participants do not fully understand the investment risks and rely heavily on others for advice, often to their financial detriment. The decline and volatility of the stock market, particularly the precipitous decline in the technology sector, has eroded the value of even the most professionally managed mutual funds. And everyone with a 401(k) retirement account, as well as Federal employees participating in the common stock fund of the Thrift Savings Plan, have seen the value of their accounts plummet by as much as 25 per cent or even more.

H.R. 2269 is intended to address the real need of employees and workers for better investment advice and services. Unfortunately, the bill goes too far in attempting to accomplish this goal. By weakening ERISA's safeguards against conflicts of interest, this bill would remove some of the oldest, most effective and prophylactic protections ever enacted by Congress to protect employees and their retirement savings. H.R. 2269 would allow benefit plans to contract with one firm to both manage participant's investment funds and to provide those same participants with personalized investment advice. In other words, it would permit conflicted investment advice—which is now prohibited by ERISA—and substitute a disclosure regime, similar to the Federal securities laws.

I find this feature of the bill very troublesome. Disclosure is inadequate. The Financial Services Committee held numerous hearings earlier this year on the shortcomings of disclosure as an investor protection device in the area of financial analysts. Regrettably, as even the SEC and many industry leaders have concluded, disclosure is more often used to conceal or obfuscate the existence of conflicts rather than to alert or forewarn consumers. In June, the Committee began examining the very important question of whether investors are receiving unbiased research from securities analysts employed by full service investment banking firms. We learned that investors have become victims of recommendations of analysts who have apparent and direct conflicts of interest relating to their investment advice.

While apparently permitted by the SEC and the securities laws, boilerplate and tedious disclosures concerning conflicts leave investors often unaware of the various economic and strategic interests that the investment bank and the analyst have that can fundamentally undermine the integrity and quality of analysts' research. (The disclosure of these conflicts is often general, inconspicuous and even unintelligible. In addition, current conflict disclosure rules do not even reach analysts touting various stocks on CNBC or CNN.)

Recognizing the magnitude of the problem, as well as the inadequacies of the current disclosure framework, several major investment banking firms acted aggressively to protect investors as well as attempt to restore the confidence of their customers in the quality and objectivity of their financial analysis. For example, Merrill Lynch and Credit Suisse First Boston banned their analysts from owning stock in companies they cover. And Prudential Securities actually exited the investment banking business and is using its lack of conflicts as a marketing tool to attract retail brokerage business.

In my view, disclosure requirements, although positive, are still woefully inadequate to confront the systemic conflicts of analysts that necessarily taint advice, skew the market and ultimately harm investors. I continue to believe SEC rulemaking and direct SEC regulation is required to protect investors from serious conflicts of interest. And I am disappointed that new SEC Chairman Pitt, speaking to a securities industry trade association last week, said ''I don't think there is any inherent need for a prohibition against an analyst owning stock'' and then expressed his ''confidence that Wall Street firms will come up with solutions that are in the best interests of investors.''

I don't think Wall Street firms are the best protectors of investors or other consumers or pension plan participants. History—recent history, not ancient history—teaches us otherwise.

I agree with the premise of H.R. 2269 that investors, including employees participating in defined contribution plans, need better information, investment advice and alternatives. But I believe they need them from objective, qualified and independent sources. Fortunately, it is already available in the marketplace without opening a Pandora's box to serious conflicts of interest by eroding ERISA's prohibited transactions safeguards. And there has been no showing to the contrary—there is a highly competitive and diverse market providing independent services to pension plan sponsors and participants.

I do not question the motives of the many financial services firms that are interested in providing additional levels of service to pension plan participants and, therefore, support H.R. 2269. I only question why they support this radical approach when it is possible to develop a more measured approach that will continue important existing protections for plan participants and avoid some of the very serious conflict issues that are undermining the reputation of many financial services firms, angering customers and attracting the attention of regulators and policymakers.

An alternative will be offered during this debate that will attempt to achieve a better balance of several important policy goals—more information and choice for plan participants from independent and professional sources and preservation of essential existing protections against conflicts of interest. I should note that this is the approach favored by groups that actually serve and represent workers and plan participants—AARP, AFL–CIO, Consumer Federation and the Pension Rights Center.

TRIBUTE TO DR. LEE HARTWELL

HON. GEORGE R. NETHERCUTT, JR.

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, November 16, 2001

Mr. NETHERCUTT. Mr. Speaker, I rise to pay tribute to Dr. Lee Hartwell, president and director of the Fred Hutchinson Cancer Research Center in Seattle, Washington. On October 8, 2001, Dr. Hartwell was awarded the 2001 Nobel Prize in Physiology or Medicine.

Dr. Hartwell is a pioneer in the biomedical research community and Washington State is proud to have his leadership. Thirty years of diligent research to understand cell division and the cell cycle has led to this significant accomplishment. Dr. Hartwell's work now forms the basis of our understanding on how cells divide and of the molecular basis of cancer.

I am confident that his findings will result in more effective cancer treatments and eventually save lives. His accomplishments in this area remind us in Congress that federal support for basic biomedical research must remain on the forefront of our National agenda.

We have always known Dr. Hartwell to be a leader for the biomedical research community in the Pacific Northwest. Now, the world knows what a true visionary we have in our state.

ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENT ACT 2001

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 16, 2001

Mr. MATSUI. Mr. Speaker, I am pleased today to join with Congressman CLAY SHAW, the Chairman of the Subcommittee on Social Security, to introduce legislation regarding the fees owed to attorneys who represent disability claimants before the Social Security Administration (SSA). Our Subcommittee has held a number of hearings on the attorney fee process and this bill would make several needed changes to this system that would improve the attorney payment system and thereby expand access to professional representation among disability claimants.

Under current law, when an attorney successfully represents a Social Security disability claimant and that claimant is entitled to past-due benefits, SSA retains a portion of those past-due benefits in order to pay the attorney for the services he or she provided. Specifically, SSA withholds and pays directly to the attorney 25 percent of past-due benefits, not to exceed a cap of $4,000. (Under an alternative procedure, SSA approves a fee for which an attorney submits a petition detailing the specific charges, but in such cases the fee that is paid directly to the attorney by SSA out of past-due benefits cannot exceed the lesser of 25 percent of the past-due benefits or $4,000.) This system of direct-payment, which is only available to attorneys representing applicants for Social Security disability insurance benefits, helps to promote access to representation by assuring that attorneys receive payment for their services while protecting beneficiaries by capping allowed fees.

Professional representatation is a valuable—and indeed vital—service. The disability determination process is complex. Claimants without professional legal representation appear to be far less likely to receive the benefits to which they are entitled. For example, in 2000, 63.6 percent of claimants represented by an attorney, but only 40.1 percent of those without one, were awarded benefits at the hearing level.

This legislation makes three important changes to the attorney-fee system:

It raises the cap on the allowed fee to $5,200. Although SSA has regulatory authority to increase the $4,000 cap, it has failed to exercise this authority and delayed raising the cap for too long. This legislation would statutorily adjust the cap for inflation since 1991.

It extends the direct-payment system to attorneys representing claimants for Supplemental Security Income. Without direct fee payment, SSI claimants are often unable to obtain needed legal representation, as there is no way for attorneys to be assured of payment for their services. Such claimants are often particularly in need of professional assistance, as they have no other sources of income to fall back on should their claim for disability be wrongly denied.

It caps the processing fee deducted from the attorney's payment at $100. Since the adoption of the processing fee in the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106–170), our Subcommittee has conducted two hearings on the long delays involved in paying attorney fees. We have had some success in speeding up payment, but there remains much room for improvement. It is only fair to cap the processing fee if SSA cannot assure timely payment of fees. Hopefully, this cap, in combination with the other provisions of the bill, will also mitigate the loss of experienced representatives from the disability bar, who have been forced to close their practices as a result of delays in fee payments and the imposition of the processing fee.

In closing, I look forward to working with Chairman SHAW on this piece of legislation in the same bipartisan manner that characterized our successful efforts on the Work Incentives Improvement Act, the repeal of the retirement earnings test, and our ongoing efforts to protect the security and privacy of Social Security numbers. With this sort of collaboration, I am certain that we can pass this bill as well, thereby improving the fairness of the attorney-fee payment system and, more importantly, ensuring that disability claimants have qualified and reliable attorneys to whom they can turn for assistance.

TRIBUTE TO RIVERSIDE-BROOKFIELD AND JOLIET CATHOLIC HIGH SCHOOL FOOTBALL TEAMS

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 16, 2001

Mr. LIPINSKI. Mr. Speaker, I rise today to pay tribute to the remarkable young men of Riverside-Brookfield and Joliet Catholic high school football teams, who faced off during the Class 5A quarterfinal for one of the most exciting games of the season.

Before a standing room only crowd, Joliet Catholic scored on each of its five first half possessions, scoring 35 points on 47 running plays and one pass. Riverside-Brookfield marched down the field twice in a combined 34 seconds before going into halftime. Late in the fourth quarter, Joliet Catholic went up 56–44 with 2:07 left in regulation; however, Riverside-Brookfield answered with a 30-yard touchdown pass with just 51 seconds remaining. After recovering an onside kick at Catholic's 47-yard line, Riverside-Brookfield was stopped first up the middle and then with a broken pass in the end zone.

The quarterfinal showcased two of the top talents in Illinois, Tim Brasic and J.R. Zwierzynski. Orchestrating Riverside-Brookfield's five receiver offensive set, Brasic completed 24-of-48 passes for a playoff record of 571 yards and 7 touchdowns. Brasic's record-breaking season included 4,622 passing yards and 485 attempts, 58 touchdowns and 700 yards rushing. Brasic's performance earned him a spot on the 2001 All-Chicago Area team, and Player of the Year honors. Brasic's career honors include 7,888 passing yards, 953 attempts, and 87 touchdowns.

On the opposite side of the field, J.R. Zwierzynski of Joliet Catholic rushed for 312 yards and five touchdowns on 43 carries. Leading the two time defending state champion Hilltoppers, one of the most consistently dominating teams in Illinois winning 38 out of their last 39 games, Zwierzynski is the lone repeat selection from last year's All-Chicago Area football team.

Riverside-Brookfield and Joliet Catholic, and their leaders Tim Brasic and J.R. Zwierzynski demonstrated talent and sportsmanship in their quarterfinal match up and throughout the 2001 season. I whole-heartedly congratulate the teams, coaching staff, and schools and wish them all the best in the future.

INTRODUCTION OF THE ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENT ACT OF 2001

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 16, 2001

Mr. SHAW. Mr. Speaker, today I am introducing legislation that, if enacted, would update and improve the fee payment system to attorneys who represent Social Security Disability Insurance claimants as well as Supplemental Security Income claimants.

As many of you know, filing for Social Security benefits—especially disability benefits—is so complicated that many claimants must hire attorneys to guide them through the process.

Attorneys who represent Social Security claimants may choose to receive their fees directly from the Social Security Administration. Under this option, the agency deducts the fee from the claimant's past-due benefits and forwards it to the attorney. Prior to last year, taxpayers picked up the tab for the agency's costs of processing, withholding, and forwarding this fee to the attorney.

The Ticket to Work and Work Incentives Improvement Act changed that. Many people on both sides of the aisle agreed that having lawyers—not taxpayers—pay for Social Security's processing of their paychecks was the right thing to do. The law also required the General Accounting Office to examine a number of issues relating to the agency's processing of attorney fees.

In a hearing held in May of this year, the Ways and Means Subcommittee on Social Security examined the current state of service delivery to claimants and their representatives, the findings of the GAO study about the costs of administering the attorney fee, the feasibility and advisability of two types of fee assessments, the potential for assessments to reduce applicants' access to representation, the feasibility of linking fee assessments to the timeliness of payment to attorneys, and the advisability of extending attorney fee disbursement to the Supplemental Security Income program.

During the hearing, the Subcommittee learned that despite improvement in the timeliness of the Social Security Administration's processing of attorney fees, there are a number of viable process improvements that can be implemented to ensure the best possible service delivery to claimants and their attorneys. That is why, I, along with Ranking Member MATSUI, are introducing the Attorney Fee Payment System Improvement Act of 2001.

This legislation improves the attorney fee payment process in a number of ways. First, it would increase the current fee cap (which limits fees under fee agreements to 25 percent of past-due benefits or $4,000) from $4,000 to $5,200. The new cap increase represents the first time the cap has been raised in ten years.

Second, the 6.3 percent assessment on an attorney's approved fee will be subject to a cap of $100 to help ensure enough attorneys remain available to represent claimants before the Social Security Administration.

Third, the bill would improve Supplemental Security Income applicants' access to representation. Because there is no direct payment of attorneys' fees in SSI cases, many attorneys cannot collect a fee from a successful client, and as a result choose not to represent those applying for SSI. The disability application process is just as complex and just as difficult to navigate, whether an individual is applying for Social Security disability benefits or SSI benefits. This provision will help ensure that all claimants have equal access to representation.

Individuals with disabilities rely on Social Security disability and/or SSI benefits for life-sustaining income. We must do all we can to ensure their efforts to obtain benefits are supported, not hampered. Enactment of this bill